

REMARKS

On 10/26/2006, during appeal of this case, the applicant filed a reply under 37 CFR 41.39(b)(1) to the Examiner's Answer with a new ground of rejection and requested that prosecution be reopened. In his first subsequent action, the Examiner issued an Advisory Action dated 09/26/2007. The Advisory Action set the period for reply to expire on (1) the mailing date of the Advisory Action, or (2) the date set forth in the Final Rejection, whichever is later. However, both periods had already expired upon the issuance of the Advisory Action.

The last Final Office Action issued in this case was dated 01/10/2006. Accordingly, the statutory six-month deadline with reference to this Final Action expired on 07/19/2006, over a year prior to the issuance of the current Advisory Action. Therefore, no time has in fact been allowed for response to the Advisory Action.

Pursuant to MPEP § 1207.03(V)(A), "[O]nce appellant files a reply in compliance with 37 CFR 1.111 in response to an examiner's answer that contains a new ground of rejection, the examiner must reopen prosecution by entering and considering the reply. The examiner may make the next Office action final ..." (Emphasis added.) Therefore, it is clear that the Examiner must reopen prosecution

and issue an Office action with an appropriate time for response, as required by 37 CFR 1.134, following an appellant's request under 37 CFR 41.39(b)(1). In this case, the Examiner instead issued an Advisory Action and set alternative times for response that had already expired on the date of issuance of the Advisory Action.

Therefore, the applicant respectfully requests that the Advisory Action be withdrawn and that an Office action be issued as required by the regulations. If the Examiner deems the Advisory Action to satisfy the requirements of MPEP § 1207.03(V)(A), quoted above, the applicant requests that an appropriate time for response be set, consistent with 37 CFR 1.134, so that the record reflect a viable deadline for response.

The applicant also respectfully directs the Examiner to the last part of MPEP § 1207.03(V)(A), which states: "The examiner may make the next Office action final unless the examiner introduces a new ground of rejection that is neither necessitated by the applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). See MPEP § 706.07(a)." (Emphasis added.) In this case, the new ground of rejection was neither necessitated by the applicant's amendment (since the previously filed amendment, dated 03/10/2006, was not

entered), nor based on new information submitted by the applicant [since no IDS was filed under 37 CFR 1.97(c)]. Therefore, it is respectfully submitted that the Office action that should have issued after the applicant requested that prosecution be reopened under 37 CFR 41.39(b)(1), which is being solicited by filing this paper, should also not be final according to the applicable rules.

No fee is believed to be due with this paper. However, please charge any cost that may nevertheless be associated with this response to our Deposit Account No. 04-1935.

Respectfully submitted,



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